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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,279	11/19/2003	Clifton E. Scott	020296	9985
23696	7590	10/26/2006	EXAMINER	
QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121			DARE, RYAN A	
			ART UNIT	PAPER NUMBER
			2186	

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/718,279

Applicant(s)

SCOTT ET AL.

Examiner

Ryan Dare

Art Unit

2186

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☒ Newly proposed or amended claim(s) 28 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-5, 17-26 and 28-32.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 27.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Claim 27 remains rejected. see attachment.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

MATTHEW KIM

SUPERVISORY PATENT EXAMINER

***Allowable Subject Matter***

1. Claims 1-5, 17-26 and 29-32 remain allowable. Since claim 28 now incorporates all limitations of claim 27 and is written in independent form, claim 28 is now also in condition for allowance.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Chen. Chen teaches a wireless communication device, comprising:

a processor, in fig. 2, processor 112;

a flash memory device comprising a code bank and a data bank, wherein the code bank comprises a local copy of a flash driver operable to be accessed by the processor to perform operations on the data bank, in fig. 3, where the flash memory driver 132 which is in the code bank, and data file 136 which is in the data bank; and

a storage device, external from the flash memory device, comprising an external copy of the flash driver operable to be accessed by the processor to store data in the code bank, in par. 4 and fig. 4.

### ***Response to Arguments***

3. Applicant's arguments, see pages 7-8, filed 10/11/06, with respect to the rejection of claim 27 under 35 U.S.C. 102 have been fully considered but are not persuasive. It is apparent that Chen uses the term "data" to refer to both the flash memory driver and system program code, in addition to the data file, in par. 4. As disclosed in par. 6, the data file is simply a portion of the flash memory 26, with the system program and flash memory driver occupying separate portions of the flash memory. When Chen discloses not being able to read and write data to the flash memory at the same time (par. 4) it is clear that Chen means to read and write to any location in the flash memory, including the program and driver portions, since the non-RWW nature of the flash memory does not allow this. The Examiner must give the broadest reasonable interpretation of the claim and the broadest reasonable interpretation of the word "data", especially when considering the disclosure of Chen, could mean program code or a flash memory driver.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Dare whose telephone number is (571)272-4069. The examiner can normally be reached on Mon-Fri 9:30-6.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Kim can be reached on (571)272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ryan A. Dare  
October 23, 2006



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